IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.877 OF 2002

IN

SESSIONS CASE NO.132 OF 2000

Chandrakant Vinayak Kadam .. Appellant

Vs.

The State of Maharashtra .. Respondent

Mr.A.R.Pitale for the appellant

Mrs.V.R.Bhosale, A.P.P. for the respondent / state

CORAM: J. N. PATEL &
A. A. SAYED, JJ.

DATE : 21ST APRIL, 2007

ORAL JUDGMENT (PER J.N.PATEL, J):

1. The appellant was tried on a charge of having murdered Santaji Lad by the 1st Ad-hoc Additional Sessions Judge, Kalyan in Sessions Case No.132 of 2000. The learned Trial Court by its judgment and order dt.11.07.2002 held that the appellant is guilty

of having committed the offence punishable under section 302 of the Indian Penal Code and convicted and sentenced him to undergo imprisonment for life. He also imposed a fine of Rs.1000/- and in default to undergo rigorous imprisonment for one month. The trial court granted set of to the appellant for the period he was in custody during trial which is subject matter of challenge in this appeal.

2. In nutshell it is the case of the prosecution that on 05.03.99 at about 8.30 a.m., the appellant Chandrakant Vinayak Kadam armed with a knife went to the house of the deceased Santaji Lad situated at Ganesh Nagar, Homebaba Tekdi, Kalyan within the jurisdiction of Kolsewadi Police Station and committed his murder by assaulting him by means of the said knife on the vital parts of his body i.e. stomach, chest and back because of which the deceased Santaji Lad died. According to the prosecution, the daughter of the appellant accused by name Pushpalata had eloped with the younger brother of the deceased by name Sandip Lad because of which the appellant accused went to the house of Santaji Lad as he had learnt that Sandip Lad was residing with him. On reaching the

house of the deceased, the appellant accused questioned the deceased Santaji Lad as to where Sandip Lad and Pushpalata has gone. Thereupon the deceased Santaji Lad told the appellant accused that he did not know whereabouts of Sandip and asked him as to why he wants to know about him, on which the appellant accused called the deceased out and they had a scuffle and the appellant accused pulled out the deceased from his house, took out a knife and inflicted multiple blows on the deceased till he fell dead.

3. The incident was witnessed by Anil Gangaram Lad P.W.No.2, Prakash Bhagwad Shinde P.W.No.1, Suvarna Suresh Dalvi P.W.No.5, Manda Baban Yewale P.W.No.6, Suvarna Pandurang Chavan P.W.No.7, Hirabai Ashok Kadam, P.W.No.8 and others. F.I.R. Exhibit 15 came to be lodged by Anil Gangaram Lad, P.W.No.2. On the basis of the F.I.R., the police registered crime no. I-48/99 against the accused for having committed offence under section 302 of the Indian Penal Code and the investigation in the matter was taken over by Sr.P.I. of Kolshewadi Police Station, Rajaram Dattatray Jagtap, P.W.No.13 who deputed P.S.I.

Vithalwadi Police Station, Kondiba Bandu Sawant, P.W.No.15 to visit the spot and take necessary steps in the matter of investigation, on which P.S.I.Sawant went to the spot near Homi Baba Tekdi in Ganesh Nagar area. He found the body of the deceased lying on the spot which was identified by the complainant,Anil Lad, P.W.No.2. P.S.I.Sawant prepared inquest panchnama Exhibit 5 and the dead body was sent to Kalyan Municipal Hospital for post mortem. He also prepared the spot panchnama in the presence of the two panchas and seized one white towel and blood samples from the spot.

4. In the course of investigation P.W.No.13 Sr.P.I.Jagtap recorded the statements of seven witnesses. On arrest of the accused, it was found that he had injuries on his palm and therefore, he was taken for medical examination. On 5.3.99 itself the appellant accused came to be arrested. Thereafter on the next date statement of 5 more witnesses came to be recorded. On 7.3.99 at the instance of the appellant accused, the knife (Article 9) came to be seized and so also in the house search of the appellant accused, his pant (Article 5) came to be seized under panchnama Exhibit 18. The

muddemal collected in the course of investigation were sent for Chemical Analysis. After the investigation was over, charge sheet came to be filed against the appellant accused.

5. In reply to the charge, the appellant accused initially pleaded not guilty and claimed to be tried but in his statement under section 313 of the Cr.P.C. particularly reply to Question No.85, he did admit the incident which led to death of Santaji Lad but took the plea that as his daughter Pushpalata had left home to answer natures call and did not return, he went out in search of her and therefore, he was going towards Police Station to file a complaint. As the road leading to police station passes through the house of Santaji Lad, the deceased Santaji Lad accosted him and as he found that he was going to Police Station to file a complaint, Santaji told him that he would also come with him to the Police Station. Then Santaji went inside his house and came out from there and started abusing him. According to the appellant accused, Santaji told him that they had kidnapped his daughter and they will also kidnap his wife and he took out a knife and started assaulting him. So he caught the knife and scuffle took place between him and Santaji.

At the door step of the house belonging to Santaji there is a platform i.e. ota. On this platform Santaji fell down. According to the appellant accused, there was no witness present on the spot. As Santaji fell down, he gave up the knife and told him that he would not allow him to go to the Police Station. At that time, he was under tension of his daughter's examination of 10th standard. Therefore, under the fit of anger, he took Santaji's knife and stabbed him. He threw the knife on the spot. Thereafter he left the spot. According to him, at 5.30 p.m. on the same day, he went to the Police station. Till that time, the police had brought his daughter Pushpalata. This clearly goes to show that most of the prosecution case relating to the incident in which Santaji was killed is not disputed by the appellant accused. But this by itself cannot be accepted to record the conviction against the appellant accused of having committed murder of Santaji Lad as it is a well settled principle that the burden of proving the case solely lies on the prosecution.

6. The prosecution in order to prove its case has examined 7 eye witnesses. Out of whom one is a panch, P.W.No.1, Prakash

Bhagwat Shinde relating to spot panchnama and on the point of discovery of knife (Article 9) at the instance of the appellant accused. The prosecution has also examined other panchas like P.W.No.3, Sham Manglya Dinkar, in respect of the house search of the accused from where the pant (Article 5) came to be seized under panchnama Ex.18, P.W.No.4, Harishchandra Jairam Ahire in respect of discovery of knife on the basis of memorandum panchnama Ex.21 and seizure panchnama Ex.22 and Satish Dharma Rahate, P.W.No.9 and P.W.No.10, Suresh Laxman Parkar on the point of arrest of the accused Ex.32 and seizure of his shirt (Article 7).

7. In order to prove that Santaji Lad's death was homicidal prosecution has examined Dr.Suresh Babu Kadam, P.W.No.12 who conducted the post mortem examination. Prosecution has also examined Dr.Kishor Satwaji Sundarmal, P.W.No.16 who examined the injuries suffered by the accused and placed reliance on the forensic evidence in the form of chemical analyser's report.

8. The learned counsel for the appellant accused, Mr.A.R.Pitale submitted that the prosecution has examined all interested witnesses in the case who are either related to the deceased or known to them and therefore, their evidence will have to be appreciated in the backdrop that the witnesses had tried to frame the appellant accused as the assailant whereas this is a case where the incident has occurred in a fit of anger and the appellant accused was deprived of his power of self control due to grave and sudden provocation and it was committed without premeditation and appellant having not taken undue advantage of it or acted in a cruel and unusual manner which also stands corroborated by the fact that the accused suffered injury on his palm and the medical officer Dr.Kishor Satwaji Sundermal, P.W.No.16 who was examined by the prosecution has stated in his evidence that the injury mentioned is possible in self defence and, therefore, at the most this would be a case in which the appellant accused can be convicted for having committed an offence punishable under section 304 part II and therefore, this court should alter the conviction from section 302 to section 304 part II, considering the period the appellant accused has already undergone so that his

sentence can be accordingly modified.

9. The learned counsel appearing for the appellant accused places reliance on the decision of this court in the case of Ashok Bhaguji Khadke vs. State of Maharashtra reported in 2006 ALL MR (Cri) 146 and Tarachand Udhaorao Bhagat & ors. vs. State of Maharashtra reported in 2000 ALL MR (Cri) 905 in support of his contention.

10. The learned A.P.P. submitted that the evidence brought on record by the prosecution clearly goes to establish that the appellant accused visited the house of the deceased and challenged the deceased as he suspected that his daughter Pushpalata has been abducted by the brother of the deceased. It is further submitted that except for the wife of the accused, P.W.No.11, Sunita Santaji Lad and P.W.No.2, Anil Gangaram Lad who has lodged the F.I.R., all the other witnesses examined by the prosecution are independent witnesses and none of them have deposed the facts which are in consonance with the defence raised by the learned counsel

appearing for the appellant relying on the statement of the appellant u/s 313 Cr.P.C.

11. The learned A.P.P. submitted that the case of the appellant accused neither falls under exception 1 or exception 4 of section 300 of the Indian Penal Code. On the other hand, this is a case where the appellant accused himself went to the house of the victim and challenged him. The appellant accused was armed with knife and inflicted multiple blows on the victim who was unarmed even after the victim fell down.

12. It is further submitted that the nature of injuries found on the accused can also be caused if a person uses a knife for assaulting causing multiple blows and, therefore the appellant accused cannot take advantage of these injuries to his benefit as under section 313 of the Cr.P.C. it is not explained how these injuries were caused to him. On the other hand it is his case that the deceased inflicted multiple blows on him whereas there is only one injury on his palm. Therefore, the finding arrived at by the trial court and the conviction and sentence does not call for any interference.

13. Though the defence has not disputed the fact that the death of Santaji Lad was homicidal still we find it proper to examine the medical evidence on record as the learned counsel for the appellant accused has also tried to canvas before us that the case of the appellant accused can be considered to be one of exceeding his right of private defence in the given facts and circumstances. P.W.No.12 Dr.Suresh Babu Kadam conducted autopsy on the dead body of Santaji Lad and made following observations:

> "There was one incised wound on the left side of chest of the body. The injury was 6 and half inches below mid-clavicle. Size of the injury was 2 x 1 c.m. Depth of this injury could not be judged. The shape of the injury was elliptical. Tailing of the injury was on upper side.
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> There was incised wound on the left side of the chest of the body. This injury was on the distance of 4 inches and it was below the first injury. The injury was located in mid-clavicle line, at coastal margine and it was extending

upto abdomen. Size of this wound was 2/2 x ¼ c.m. Depth of the wound could not be judged. Shape of this injury was elliptical. This injury was tailing at medical part.

There was one incised wound on the right side of the chest of the body. The injury was 21/2 inch below right nipple. Size of this injury was 2 c.m. X 1 cm. Shape of the injury was elliptical. Depth of the wound could not be judged. The injury was tailing on medical size.

There was incised wound on right lower scapular border. Size of this wound was 2 x 1 ¼ c.m. Shape of the wound was elliptical. Injury was tailing at lower part.

There was incised wound at bad midline, 7 inches below last cervical vertebra on right side of the body. Size of this injury was 2 ½ x 1 ¼ inch. Shape of the wound was elliptical. It was tailing on medical side.

There was incised wound on the right little finger. Size of this wound was 1 ½ cm x 12 cm. The injury was located on palmar aspect.

There was incised wound at right ring finger, located at palmer aspect. Size of this wound was 11/2 cm. X ½ cm. There was incised wound on left palm. Its size was 2 cm. X ½ cm."

14. In the opinion of Dr.Kadam, the person died of cardio respiratory arrest due to haemorhagic shock, due to multiple incised wounds on vital organs. All the above injuries are possible by sharp and cutting weapon like knife (Article 9) and he has confirmed the same in his post mortem report as prepared by him bearing his signature which is Exhibit 40.

15. In the cross examination of Dr.Kadam, the evidence of Dr.Kadam was not shaken at all. Therefore, one can see that in all 9 incised wounds on vital parts of the body have been caused to the victim which are indicative of the fact that the assailant's act of

committing murder was pre-mediated therefore he came armed with a knife. The eye witness account of the witnesses which are brought on record by the P.W.No.2 complainant, the 5 ladies who witnessed the incident including the wife of the victim Sunita Lad, P.W.No.11 had given cogent, consistent and reliable account of the manner in which the appellant accused caused multiple injuries on the deceased person by assaulting the victim with a knife. The incident is also narrated by P.W.No.2 as well as P.W.No.1.

16. From the evidence of all these witnesses, one thing is clear that they were all present at the scene of occurrence by the time the appellant accused was able to drag the victim out of his house and gave him knife blows because of which the victim fell on the ground. Though the witnesses might have reached the scene of occurrence at different stages but otherwise on this aspect it was the appellant accused who was holding knife and was seen assaulting the deceased, their evidence is consistent and stands corroborated by the medical evidence, the weapon of assault i.e. knife Article 9 and the spot at which the victim was assaulted. The only witness who was there right from the beginning is P.W.No.11

who is the wife of the deceased. Merely because she happens to be the wife of the deceased does not mean that her evidence is unreliable. On the other hand this witness has narrated the incident from its initiation till her husband was done to death. She has not suppressed anything in her evidence before the court. She has stated that on the fateful day at about 8.30 a.m, the appellant accused came to their house and asked her as to where Sandip Lad and Pushpalata had gone. When her husband questioned him as to why he is asking about it, at that time the appellant accused called her husband out of the door. A scuffle started between her husband and accused. Accused pulled out her husband. Accused took out one knife. Accused stabbed on her husband's chest. The accused also stabbed on both the sides of the upper part of the body of her husband. She tried to rescue her husband but she fell down. She has also stated that Suvarna Dalvi, P.W.No.5 and Suvarna Chavan, P.W.No.7 had also come there to rescue her husband but the accused showed them knife. She has also named two more witnesses Hirabai Kadam and Nandabai Ingale. She has deposed to the fact that when she had gone to rescue her husband, the accused kicked her from her backside due to which she fell on the ground.

At that time, Anil Gangaram Lad, P.W. No.2 had also arrived at the spot of the incident who went to the Police Station and lodged a complaint. Thereafter Police came at the spot of the incident and on the next day her statement came to be recorded. In her cross examination she has specifically admitted that it is correct that on the day of the incident Pushpalata had eloped with Sandip.

17. We find no reason to disbelieve the evidence of all these witnesses and in their cross examination nothing has been brought on record that this was an incident which took place due to grave and sudden provocation in sudden fight.

18. On the other hand the evidence of P.W.No.11 in so far as she refers to the word scuffle, she has narrated the incident in the context that the scuffle took when the appellant accused tried to pull out her husband and assaulted him and in all probability it was to describe the resistance on the part of the victim as the accused was armed with knife. We find that the evidence on record from any angle does not bring the case of the appellant accused within the first and fourth exception to Section 300 of the I.P.C.

19. It was canvassed before us by the learned counsel for the appellant accused that the appellant accused was greatly disturbed by the fact that his daughter has eloped with the brother of the deceased and therefore, this is a fit case where it can be said that the appellant accused was deprived of self control.

20. We do not find that the appellant accused can be said to be under such state of mind as it is his specific case that he was actually going to the Police Station to lodge a report as his daughter did not return home and the victim rather accosted him and threatened him of dire consequences if he goes to the police station to lodge a report. The appellant accused has tried to make out a case that he was a victim and the deceased was the assailant and threatened the appellant accused of even abducting his wife. The case put up in defence and the plea taken by the appellant accused u/s. 313 of the Cr.P.C. is self contradictory and nothing but an after thought which does not go well with the case of the prosecution which is duly established. Therefore after examining the evidence as a whole and after taking into consideration the C.A.'s report which shows that

the clothes of the deceased as well as the assailant were soaked with blood clearly goes to show that it was the appellant accused who has committed the murder as there was no reason why clothes of the appellant accused will be soaked with blood compared with the injuries suffered by him which was just an incise wound on the palm of the hand which as rightly pointed out by the learned A.P.P. can be caused if a person uses a knife (Article 9) for causing multiple injuries on the victim's body. Therefore, we have no hesitation to arrive at a conclusion that it is the appellant accused who is the author and who has caused the death of the victim and the trial court was justified in holding that he is guilty of committing offence u.s.302 of the I.P.C. As regards the two authorities cited by the learned counsel for the appellant accused the principle and the ratio laid down in the two cases in giving the benefit to the appellant in altering their conviction from 302 to 304 part II are distinctly based on the peculiar facts and circumstances of the respective cases. From the evidence of this case, no such inference can be drawn and benefit can be extended to the appellant accused. We find that there is no merits in the appeal and the

same deserves to be dismissed. The appeal therefore, stands dismissed.

J. N. PATEL, J

A. A. SAYED, J